

REMARKS

Applicants submit this Amendment in reply to the Office Action mailed January 11, 2005.

As an initial matter, Applicants gratefully acknowledge the Examiner's allowance of claims 15-17, 52-55, and 56, and the Examiner's indication of the allowability of the subject matter of claim 61. Applicants have rewritten claim 61 into independent form at this time. Accordingly, Applicants assert that independent claim 61 is now in condition for allowance.

By this Amendment, Applicants have canceled withdrawn claims 47, 48, and 64-90, without prejudice or disclaimer. Applicants reserve the right to pursue the subject matter of those claims at a later date, for example, in an application claiming priority to or having related priority to this application.

Also by this Amendment, Applicants have amended independent claim 57 and dependent claim 58 to both improve grammatical clarity and to further define the claimed invention, and have added new claims 91-95. The originally-filed application fully supports the subject matter of amended claims 57 and 58 and new claims 91-95, at least, for example, at Figs. 10-11 and the corresponding portions of the text. No new matter has been introduced.

Before entry of this Amendment, claims 15-17, 47, 48, and 52-90 were pending, with claims 47, 48, and 64-90 having been withdrawn from consideration. After entry of this Amendment, claims 15-17, 52-63, and 91-95 are pending. Claims 17, 57, and 61 are the sole independent claims.

On pages 2-3 of the Office Action, claims 57-60, 62, and 63 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,029,672 to Vanney et al. ("Vanney"). Applicants request withdrawal of this rejection for the reasons explained below.

Vanney does not disclose or suggest the invention as set forth in amended independent claim 57. For example, independent claim 57 recites, among other aspects, a device "configured to permit advancement of the conduit to the heart wall while the device is inserted in the heart." Vanney does not disclose at least this aspect of claim 57.

Vanney discloses a transmyocardial implant procedure and tools. In an aspect, Vanney discloses placing "the distal tip 204 of guide needle 200 through the myocardium 84 at a location about 3.5 mm transverse to the axis of the artery 82 (FIGS. 18-19). When the side opening 210 of the needle 200 passes the inner surface 92 of the myocardium 84, blood flow through the needle 200 indicates the needle 200 has penetrated into the left ventricle 86." (Col. 7, lines 43-49). Vanney then discloses that

[t]he guide wire 100 is passed through the needle 200 by straightening the tip 102 and inserting the tip 102 into the bore 208 through the handle 202 of the needle 200. As the guide wire 100 is passed through the needle 200, the resiliently biased tip 102 is urged out of the needle's side opening 210 (FIGS. 20-21). The guide needle 200 is then removed over the guide wire 100 leaving only the guide wire 100 extending through the thickness of the myocardium 84 (FIGS. 22-23).

(Col. 8, lines 15-23).

After the guidewire 100 is in place in the heart with the guide needle 200 having been removed, Vanney discloses inserting a dilator 400 and myocardial sheath 300 over the guide wire 100 and into the myocardium 84. (Col. 8, lines 24-34; FIGS. 24-26).

The combined myocardial sheath 300 and dilator 400 urge the tissue of the myocardium 84 apart to form an opening through the myocardium 84 sufficient to pass the myocardial portion 14 of the implant 10. (Col. 8, lines 30-34). The myocardial portion 14 of the implant 10 is then inserted through the sheath 300 and the vessel portion 12 is inserted in the artery 82. (Col. 8, lines 51-64). Once the implant is placed in the proper position, the sheath 300 is removed. (Col. 10, lines 37-48).

Assuming *arguendo* that guide needle 200 corresponds to the claimed elongated tubular body of the device, as asserted by the Examiner at page 2 of the Office Action, Vanney discloses removing the guide needle 200 from the heart after inserting the guidewire 100, and thereafter placing the sheath 300 and implant 10 into the heart via the guidewire 100 while the guide needle 200 is no longer inserted in the heart. Vanney discloses no device other than the guidewire 100 that the guide needle 200 permits to be advanced to the heart wall while the needle 200 is inserted in the heart.

Thus, Vanney fails to disclose or otherwise suggest, a device having the claimed features of claim 57 that is "configured to permit advancement of the conduit to the heart wall while the device is inserted in the heart." For at least this reason, independent claim 57, and its dependent claims 58-60, 62, 63, and 91-95, are patentably distinguishable from Vanney, and the Section 102(e) rejection based on Vanney should be withdrawn..

Claims 15, 16, 52-56, 58-60, 62, 63, and 91-95 depend from one of independent claims 17 and 57, and are therefore allowable for at least the same reasons that each of those respective independent claims is allowable. In addition, at least some of the

dependent claims recite unique combinations that are neither taught nor suggested by the cited references and therefore at least some also are separately patentable.

Applicants respectfully request the withdrawal of the outstanding rejection and the timely allowance of pending claims 15-17, 52-63, and 91-95.

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In discussing the specification and claims in this Amendment, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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